Introduced by Senator Padilla

February 20, 2014

An act to amend Section 332.1, 367, 369, 370, 371, 372, 373, 374, 379, 397, 846.2, 9600, and 9607 of, and to repeal Sections 350, 367.7, 368, 368.5, 374.5, and 375 of, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as introduced, Padilla. Electrical restructuring.

The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of an Independent System Operator and a Power Exchange as nonprofit public benefit corporations. Existing law requires the Independent System Operator, within 6 months after receiving approval for its operation by the Federal Energy Regulatory Commission, to provide a report to the Legislature and the Electricity Oversight Board containing specified matter.

This bill would repeal this reporting requirement.

Electrical restructuring states the intent of the Legislature that individual customers not experience rate increases as a result of the allocation of transition costs, as specified, and requires the Public Utilities Commission to implement a methodology for calculating certain Power Exchange energy credits.

This bill would repeal this provision.

Electrical restructuring requires each electrical corporation to propose a cost recovery plan to the commission for the recovery of the uneconomic costs of an electrical corporation's generation-related assets and obligations, requires that the plan contain specified matter, and requires that the plan set rates for each customer class, rate schedule, contract, or tariff option, at levels equal to the level as shown on electric

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rate schedules as of June 10, 1996, provided that rates for residential and small commercial customers be reduced so that these customers receive rate reductions of no less than 10% for 1998 continuing through 2002. Electrical restructuring prohibits the commission, upon the termination of the 10% rate reduction for residential and small commercial customers, from subjecting those residential and small commercial customers to any rate increase or future rate obligations solely as a result of the termination of the 10% rate reduction.

This bill would repeal these provisions.

Electrical restructuring requires any electrical corporation serving agricultural customers with multiple meters to conduct research based on a statistically valid sample of those customers and meters to determine the typical simultaneous peak load of those customers and to report the results to those customers and the commission by July 1, 2001. Electrical restructuring requires the commission to consider the research results in setting future electrical distribution rates for those customers.

This bill would repeal this provision.

Electrical restructuring requires the commission to allow recovery of reasonable employee related transition costs incurred and projected for severence, retraining, early retirement, outplacement, and related expenses for the employees in order to mitigate potential negative impacts on utility personnel directly affected by restructuring.

This bill would repeal this provision.

This bill would strike references to these repealed statutes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 332.1 of the Public Utilities Code is 2 amended to read:
- 3 332.1. (a) (1) It is the intent of the Legislature to enact Item
- 4 1 (revised) on the commission's August 21, 2000, agenda, entitled
- 5 "Opinion Modifying Decision (D.) D.00-06-034 and D.00-08-021
- 6 to Regarding Interim Rate Caps for San Diego Gas and Electric
- 7 Company," as modified below.
- 8 (2) It is also the intent of the Legislature that to the extent that
- the Federal Energy Regulatory Commission orders refunds to

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electrical corporations pursuant to their findings, the commission shall ensure that any refunds are returned to customers.

- (b) The commission shall establish a ceiling of six and five-tenths cents (\$0.065) per kilowatthour on the energy component of electric bills for electricity supplied to residential, small commercial, and street lighting customers by the San Diego Gas and Electric Company, through December 31, 2002, retroactive to June 1, 2000. If the commission finds it in the public interest, this ceiling may be extended through December 2003 and may be adjusted as provided in subdivision (d).
- (c) The commission shall establish an accounting procedure to track and recover reasonable and prudent costs of providing electric energy to retail customers unrecovered through retail bills due to the application of the ceiling provided for in subdivision (b). The accounting procedure shall utilize revenues associated with sales of energy from utility-owned or managed generation assets to offset an undercollection, if undercollection occurs. The accounting procedure shall be reviewed periodically by the commission, but not less frequently than semiannually. The commission may utilize an existing proceeding to perform the review. The accounting procedure and review shall provide a reasonable opportunity for San Diego Gas and Electric Company to recover its reasonable and prudent costs of service over a reasonable period of time.
- (d) If the commission determines that it is in the public interest to do so, the commission, after the date of the completion of the proceeding described in subdivision (g), may adjust the ceiling from the level specified in subdivision (b), and may adjust the frozen rate from the levels specified in subdivision (f), consistent with the Legislature's intent to provide substantial protections for customers of the San Diego Gas and Electric Company and their interest in just and reasonable rates and adequate service.
- (e) For purposes of this section, "small commercial customer" includes, but is not limited to, all San Diego Gas and Electric Company accounts on Rate Schedule A of the San Diego Gas and Electric Company, all accounts of customers who are "general acute care hospitals," as defined in Section 1250 of the Health and Safety Code, all San Diego Gas and Electric Company accounts of customers who are public or private schools for pupils in kindergarten or any of grades 1 to 12, inclusive, and all accounts on Rate Schedule AL-TOU under 100 kilowatts.

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1 (f) The commission shall establish an initial frozen rate of six 2 and five-tenths cents (\$0.065) per kilowatthour on the energy 3 component of electric bills for electricity supplied to all customers 4 by the San Diego Gas and Electric Company not subject to 5 subdivision (b), for the time period ending with the end of the rate freeze for the Pacific Gas and Electric Company and the Southern 6 7 California Edison Company pursuant to Section 368, retroactive 8 to February 7, 2001. The commission shall consider the comparable energy components of rates for comparable customer classes served by the Pacific Gas and Electric Company and the Southern 10 California Edison Company and, if it determines it to be in the 11 12 public interest, the commission may adjust this frozen rate, and 13 may do so, retroactive to the date that rate increases took effect 14 for customers of Pacific Gas and Electric Company and Southern 15 California Edison Company pursuant to the commission's March 27, 2001, decision. The commission shall determine the Fixed 16 17 Department of Water Resources Set-Aside pursuant to Section 18 360.5 for customers subject to this section, reflecting a retail rate 19 consistent with the rate for the energy component of electric bills 20 as determined in this subdivision, in place of the retail rate in effect 21 on January 5, 2001. This section shall be construed to modify the 22 payment provisions, but may not be construed to modify the 23 electric procurement obligations of the Department of Water 24 Resources, pursuant to any contract or agreement in accordance 25 with Division 27 (commencing with Section 80000) of the Water Code, and in effect as of February 7, 2001, between the Department 26 27 of Water Resources and San Diego Gas and Electric Company. 28

- (g) The commission shall institute a proceeding to examine the prudence and reasonableness of the San Diego Gas and Electric Company in the procurement of wholesale energy on behalf of its customers, for a period beginning, at the latest, on June 1, 2000. If the commission finds that San Diego Gas and Electric Company acted imprudently or unreasonably, the commission shall issue orders that it determines to be appropriate affecting the retail rates of San Diego Gas and Electric Company customers including, but not limited to, refunds.
- (h) Nothing in this section may be construed to limit the authority of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code.
 - SEC. 2. Section 350 of the Public Utilities Code is repealed.

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350. The Independent System Operator, in consultation with the California Energy Resources Conservation and Development Commission, the Public Utilities Commission, the Western Electricity Coordinating Council, and concerned regulatory agencies in other western states, shall within six months after the Federal Energy Regulatory Commission approval of the Independent System Operator, provide a report to the Legislature and to the Oversight Board that does the following:

- (a) Conducts an independent review and assessment of Western Electricity Coordinating Council operating reliability criteria.
- (b) Quantifies the economic cost of major transmission outages relating to the Pacific Intertie, Southwest Power Link, DC link, and other important high voltage lines that carry power both into and from California.
- (c) Identifies the range of cost-effective options that would prevent or mitigate the consequences of major transmission outages.
- (d) Identifies communication protocols that may be needed to be established to provide advance warning of incipient problems.
- (e) Identifies the need for additional generation reserves and other voltage support equipment, if any, or other resources that may be necessary to carry out its functions.
- (f) Identifies transmission capacity additions that may be necessary at certain times of the year or under certain conditions.
- (g) Assesses the adequacy of current and prospective institutional provisions for the maintenance of reliability.
- (h) Identifies mechanisms to enforce transmission right-of-way maintenance.
- (i) Contains recommendations regarding cost-beneficial improvements to electric system reliability for the citizens of California.
- SEC. 3. Section 367 of the Public Utilities Code is amended to read:
- 367. The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995,

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and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these additions are necessary to maintain the facilities through December 31, 2001. These uneconomic costs shall include transition costs as defined in subdivision (f) of Section 840, and shall be recovered from all customers or in the case of fixed transition amounts, from the customers specified in subdivision (a) of Section 841, on a nonbypassable basis and shall:

- (a) Be amortized over a reasonable time period, including collection on an accelerated basis, consistent with not increasing rates for any rate schedule, contract, or tariff option above the levels in effect on June 10, 1996; provided that, the recovery shall not extend beyond December 31, 2001, except as follows:
- (1) Costs associated with employee-related transition costs—as set forth in subdivision (b) of Section 375 shall continue until fully collected; provided, however, that the cost collection shall not extend beyond December 31, 2006.
- (2) Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out, buy-down, or renegotiated contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation.
- (3) Costs associated with contracts approved by the commission to settle issues associated with the Biennial Resource Plan Update may be collected through March 31, 2002; provided that only 80 percent of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.
- (4) Nuclear incremental cost incentive plans for the San Onofre nuclear generating station shall continue for the full term as authorized by the commission in Decision 96-01-011 and Decision 96-04-059; provided that the recovery shall not extend beyond December 31, 2003.
- 39 (5) Costs associated with the exemptions provided in subdivision 40 (a) of Section 374 may be collected through March 31, 2002,

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provided that only fifty million dollars (\$50,000,000) of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.

- (6) Fixed transition amounts, as defined in subdivision (d) of Section 840, may be recovered from the customers specified in subdivision (a) of Section 841 until all rate reduction bonds associated with the fixed transition amounts have been paid in full by the financing entity.
- (b) Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission's determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.
- (c) Be limited in the case of utility-owned fossil generation to the uneconomic portion of the net book value of the fossil capital investment existing as of January 1, 1998, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the additions are necessary to maintain the facilities through December 31, 2001. All "going forward costs" of fossil operation, including operation and maintenance, administrative and general, fuel and fuel transportation costs, shall be recovered solely from independent Power Exchange revenues or from contracts with the Independent System Operator, provided that for the purposes of this chapter, the following costs may be recoverable pursuant to this section:
- (1) Commission-approved operating costs for particular utility-owned fossil powerplants or units, at particular times when reactive power/voltage support is not yet procurable at market-based rates in locations where it is deemed needed for the reactive power/voltage support by the Independent System

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Operator, provided that the units are otherwise authorized to recover market-based rates and provided further that for an electrical corporation that is also a gas corporation and that serves at least four million customers as of December 20, 1995, the commission shall allow the electrical corporation to retain any earnings from operations of the reactive power/voltage support plants or units and shall not require the utility to apply any portions to offset recovery of transition costs. Cost recovery under the cost recovery mechanism shall end on December 31, 2001.

- (2) An electrical corporation that, as of December 20, 1995, served at least four million customers, and that was also a gas corporation that served less than four thousand customers, may recover, pursuant to this section, 100 percent of the uneconomic portion of the fixed costs paid under fuel and fuel transportation contracts that were executed prior to December 20, 1995, and were subsequently determined to be reasonable by the commission, or 100 percent of the buy-down or buy-out costs associated with the contracts to the extent the costs are determined to be reasonable by the commission.
- (d) Be adjusted throughout the period through March 31, 2002, to track accrual and recovery of costs provided for in this subdivision. Recovery of costs prior to December 31, 2001, shall include a return as provided for in Decision 95-12-063, as modified by Decision 96-01-009, together with associated taxes.
- (e) (1) Be allocated among the various classes of customers, rate schedules, and tariff options to ensure that costs are recovered from these classes, rate schedules, contract rates, and tariff options, including self-generation deferral, interruptible, and standby rate options in substantially the same proportion as similar costs are recovered as of June 10, 1996, through the regulated retail rates of the relevant electric utility, provided that there shall be a firewall segregating the recovery of the costs of competition transition charge exemptions such that the costs of competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from these customers, and the costs of competition transition charge exemptions granted to members of the combined class of customers, other than residential and small commercial customers, shall be recovered only from these customers.

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(2) Individual customers shall not experience rate increases as a result of the allocation of transition costs. However, customers who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price.

- (3) The commission shall retain existing cost allocation authority, provided the firewall and rate freeze principles are not violated.
- SEC. 4. Section 367.7 of the Public Utilities Code is repealed. 367.7. (a) It is the intent of the Legislature in enacting this section to ensure that individual customers do not experience rate increases as a result of the allocation of transition costs, in accordance with paragraph (2) of subdivision (e) of Section 367.
- (b) The commission shall implement a methodology whereby the Power Exchange energy credit for a customer with a meter installed on or after June 30, 2000, that is capable of recording hourly data is calculated based on the actual hourly data for that customer. The Power Exchange energy credit for a customer with a meter installed before June 30, 2000, that is capable of recording hourly data shall, at the election of the customer, on a one-time basis before June 30, 2000, be calculated based on either (1) the actual hourly data for that customer or (2) the average load profile for that customer class. If the customer fails to make an election, that customer's Power Exchange energy credit shall continue to be based on the average load profile for that customer class.
- (c) Additional incremental billing costs incurred as a result of the methodology implemented by the commission pursuant to subdivision (b) may be recoverable through rates for that customer class, if the commission finds that the costs are reasonable.
- (d) The methodology implemented by the commission pursuant to subdivisions (b) and (c) shall not result in any shifts in cost between customer classes and shall be consistent with the firewall provision set forth in subdivision (e) of Section 367.
 - SEC. 5. Section 368 of the Public Utilities Code is repealed.
- 368. Each electrical corporation shall propose a cost recovery plan to the commission for the recovery of the uneconomic costs of an electrical corporation's generation-related assets and obligations identified in Section 367. The commission shall

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authorize the electrical corporation to recover the costs pursuant to the plan if the plan meets the following criteria:

- (a) The cost recovery plan shall set rates for each customer class, rate schedule, contract, or tariff option, at levels equal to the level as shown on electric rate schedules as of June 10, 1996, provided that rates for residential and small commercial customers shall be reduced so that these customers shall receive rate reductions of no less than 10 percent for 1998 continuing through 2002. These rate levels for each customer class, rate schedule, contract, or tariff option shall remain in effect until the earlier of March 31, 2002, or the date on which the commission-authorized costs for utility generation-related assets and obligations have been fully recovered. The electrical corporation shall be at risk for those costs not recovered during that time period. Each utility shall amortize its total uneconomic costs, to the extent possible, such that for each year during the transition period its recorded rate of return on the remaining uneconomic assets does not exceed its authorized rate of return for those assets. For purposes of determining the extent to which the costs have been recovered, any over-collections recorded in Energy Costs Adjustment Clause and Electric Revenue Adjustment Mechanism balancing accounts, as of December 31, 1996, shall be credited to the recovery of the costs.
- (b) The cost recovery plan shall provide for identification and separation of individual rate components such as charges for energy, transmission, distribution, public benefit programs, and recovery of uneconomic costs. The separation of rate components required by this subdivision shall be used to ensure that customers of the electrical corporation who become eligible to purchase electricity from suppliers other than the electrical corporation pay the same unbundled component charges, other than energy, that a bundled service customer pays. No cost shifting among customer elasses, rate schedules, contract, or tariff options shall result from the separation required by this subdivision. Nothing in this provision is intended to affect the rates, terms, and conditions or to limit the use of any Federal Energy Regulatory Commission-approved contract entered into by the electrical corporation prior to the effective date of this provision.
- (c) In consideration of the risk that the uneconomic costs identified in Section 367 may not be recoverable within the period identified in subdivision (a) of Section 367, an electrical

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corporation that, as of December 20, 1995, served more than four million customers, and was also a gas corporation that served less than four thousand customers, shall have the flexibility to employ risk management tools, such as forward hedges, to manage the market price volatility associated with unexpected fluctuations in natural gas prices, and the out-of-pocket costs of acquiring the risk management tools shall be considered reasonable and collectible within the transition freeze period. This subdivision applies only to the transaction costs associated with the risk management tools and shall not include any losses from changes in market prices.

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- (d) In order to ensure implementation of the cost recovery plan, the limitation on the maximum amount of cost recovery for nuclear facilities that may be collected in any year adopted by the commission in Decision 96-01-011 and Decision 96-04-059 shall be eliminated to allow the maximum opportunity to collect the nuclear costs within the transition cap period.
- (e) As to an electrical corporation that is also a gas corporation serving more than four million California customers, so long as any cost recovery plan adopted in accordance with this section satisfies subdivision (a), it shall also provide for annual increases in base revenues, effective January 1, 1997, and January 1, 1998, equal to the inflation rate for the prior year plus two percentage points, as measured by the consumer price index. The increase shall do both of the following:
- (1) Remain in effect pending the next general rate case review, which shall be filed not later than December 31, 1997, for rates that would become effective in January 1999. For purposes of any commission-approved performance-based ratemaking mechanism or general rate case review, the increases in base revenue authorized by this subdivision shall create no presumption that the level of base revenue reflecting those increases constitute the appropriate starting point for subsequent revenues.
- (2) Be used by the utility for the purposes of enhancing its transmission and distribution system safety and reliability, including, but not limited to, vegetation management and emergency response. To the extent the revenues are not expended for system safety and reliability, they shall be credited against subsequent safety and reliability base revenue requirements. Any excess revenues carried over shall not be used to pay any monetary sanctions imposed by the commission.

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(f) The cost recovery plan shall provide the electrical corporation with the flexibility to manage the renegotiation, buy-out, or buy-down of the electrical corporation's power purchase obligations, consistent with review by the commission to assure that the terms provide net benefits to ratepayers and are otherwise reasonable in protecting the interests of both ratepayers and shareholders.

- (g) An example of a plan authorized by this section is the document entitled "Restructuring Rate Settlement" transmitted to the commission by Pacific Gas and Electric Company on June 12, 1996.
- SEC. 6. Section 368.5 of the Public Utilities Code is repealed. 368.5. (a) Notwithstanding any other provision of law, upon the termination of the 10-percent rate reduction for residential and small commercial customers set forth in subdivision (a) of Section 368, the commission may not subject those residential and small commercial customers to any rate increases or future rate obligations solely as a result of the termination of the 10-percent rate reduction.
- (b) The provisions of subdivision (a) do not affect the authority of the commission to raise rates for reasons other than the termination of the 10-percent rate reduction set forth in subdivision (a) of Section 368.
- (c) Nothing in this section shall further extend the authority to impose fixed transition amounts, as defined in subdivision (d) of Section 840, or further authorize or extend rate reduction bonds, as defined in subdivision (e) of Section 840.
- SEC. 7. Section 369 of the Public Utilities Code is amended to read:
- 369. The commission shall establish an effective mechanism that ensures recovery of transition costs referred to in Sections 367, 368, 375, and 376, and subject to the conditions in Sections 371 to 374, inclusive, from all existing and future consumers in the service territory in which the utility provided electricity services as of December 20, 1995; provided, that the costs shall not be recoverable for new customer load or incremental load of an existing customer where the load is being met through a direct transaction and the transaction does not otherwise require the use of transmission or distribution facilities owned by the utility. However, the obligation to pay the competition transition charges

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cannot be avoided by the formation of a local publicly owned electrical corporation on or after December 20, 1995, or by annexation of any portion of an electrical corporation's service area by an existing local publicly owned electric utility.

This section shall not apply to service taken under tariffs, contracts, or rate schedules that are on file, accepted, or approved by the Federal Energy Regulatory Commission, unless otherwise authorized by the Federal Energy Regulatory Commission.

SEC. 8. Section 370 of the Public Utilities Code is amended to read:

370. The commission shall require, as a prerequisite for any consumer in California to engage in direct transactions permitted in Section 365, that beginning with the commencement of these direct transactions, the consumer shall have an obligation to pay the costs provided in Sections 367, 368, 375, and 376, and subject to the conditions in Sections 371 to 374, inclusive, directly to the electrical corporation providing electricity service in the area in which the consumer is located. This obligation shall be set forth in the applicable rate schedule, contract, or tariff option under which the customer is receiving service from the electrical corporation. To the extent the consumer does not use the electrical corporation's facilities for direct transaction, the obligation to pay shall be confirmed in writing, and the customer shall be advised by any electricity marketer engaged in the transaction of the requirement that the customer execute a confirmation. The requirement for marketers to inform customers of the written requirement shall cease on January 1, 2002.

- SEC. 9. Section 371 of the Public Utilities Code is amended to read:
- 371. (a) Except as provided in Sections 372 and 374, the uneconomic costs provided in Sections 367, 368, 375, and 376 shall be applied to each customer based on the amount of electricity purchased by the customer from an electrical corporation or alternate supplier of electricity, subject to changes in usage occurring in the normal course of business.
- (b) Changes in usage occurring in the normal course of business are those resulting from changes in business cycles, termination of operations, departure from the utility service territory, weather, reduced production, modifications to production equipment or operations, changes in production or manufacturing processes,

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fuel switching, including installation of fuel cells pending a contrary determination by the California Energy Resources Conservation and Development Commission in Section 383, enhancement or increased efficiency of equipment or performance of existing self-cogeneration equipment, replacement of existing cogeneration equipment with new power generation equipment of similar size as described in paragraph (1) of subdivision (a) of Section 372, installation of demand-side management equipment or facilities, energy conservation efforts, or other similar factors.

- (c) Nothing in this section shall be interpreted to exempt or alter the obligation of a customer to comply with Chapter 5 (commencing with Section 119075) of Part 15 of Division 104 of the Health and Safety Code. Nothing in this section shall be construed as a limitation on the ability of residential customers to alter their pattern of electricity purchases by activities on the customer side of the meter.
- SEC. 10. Section 372 of the Public Utilities Code is amended to read:
- 372. (a) It is the policy of the state to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth. Subject to the specific conditions provided in this section, the commission shall determine the applicability to customers of uneconomic costs as specified in Sections 367, 368, 375, and 376. Consistent with this state policy, the commission shall provide that these costs shall not apply to any of the following:
- (1) To load served onsite or under an over the fence arrangement by a nonmobile self-cogeneration or cogeneration facility that was operational on or before December 20, 1995, or by increases in the capacity of a facility to the extent that the increased capacity was constructed by an entity holding an ownership interest in or operating the facility and does not exceed 120 percent of the installed capacity as of December 20, 1995, provided that prior to June 30, 2000, the costs shall apply to over the fence arrangements entered into after December 20, 1995, between unaffiliated parties. For the purposes of this subdivision, "affiliated" means any person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common

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control with another specified entity. "Control" means either of the following:

- (A) The possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity, whether through an ownership, beneficial, contractual, or equitable interest.
- (B) Direct or indirect ownership of at least 25 percent of an entity, whether through an ownership, beneficial, or equitable interest.
- (2) To load served by onsite or under an over the fence arrangement by a nonmobile self-cogeneration or cogeneration facility for which the customer was committed to construction as of December 20, 1995, provided that the facility was substantially operational on or before January 1, 1998, or by increases in the capacity of a facility to the extent that the increased capacity was constructed by an entity holding an ownership interest in or operating the facility and does not exceed 120 percent of the installed capacity as of January 1, 1998, provided that prior to June 30, 2000, the costs shall apply to over the fence arrangements entered into after December 20, 1995, between unaffiliated parties.
- (3) To load served by existing, new, or portable emergency generation equipment used to serve the customer's load requirements during periods when utility service is unavailable, provided the emergency generation is not operated in parallel with the integrated electric grid, except on a momentary parallel basis.
- (4) After June 30, 2000, to any load served onsite or under an over the fence arrangement by any nonmobile self-cogeneration or cogeneration facility.
- (b) Further, consistent with state policy, with respect to self-cogeneration or cogeneration deferral agreements, the commission shall do the following:
- (1) Provide that a utility shall execute a final self-cogeneration or cogeneration deferral agreement with any customer that, on or before December 20, 1995, had executed a letter of intent (or similar documentation) to enter into the agreement with the utility, provided that the final agreement shall be consistent with the terms and conditions set forth in the letter of intent and the commission shall review and approve the final agreement.
- (2) Provide that a customer that holds a self-cogeneration or cogeneration deferral agreement that was in place on or before

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December 20, 1995, or that was executed pursuant to paragraph (1) in the event the agreement expires, or is terminated, may do any of the following:

- (A) Continue through December 31, 2001, to receive utility service at the rate and under terms and conditions applicable to the customer under the deferral agreement that, as executed, includes an allocation of uneconomic costs consistent with subdivision (e) of Section 367.
- (B) Engage in a direct transaction for the purchase of electricity and pay uneconomic costs consistent with Sections 367, 368, 375, and 376.
- (C) Construct a self-cogeneration or cogeneration facility of approximately the same capacity as the facility previously deferred, provided that the costs provided in Sections 367, 368, 375, and 376 shall apply consistent with subdivision (e) of Section 367, unless otherwise authorized by the commission pursuant to subdivision (c).
- (3) Subject to the firewall described in subdivision (e) of Section 367, provide that the ratemaking treatment for self-cogeneration or cogeneration deferral agreements executed prior to December 20, 1995, or executed pursuant to paragraph (1) shall be consistent with the ratemaking treatment for the contracts approved before January 1995.
- (c) The commission shall authorize, within 60 days of the receipt of a joint application from the serving utility and one or more interested parties, applicability conditions as follows:
- (1) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to load served onsite by a nonmobile self-cogeneration or cogeneration facility that became operational on or after December 20, 1995.
- (2) The costs identified in Sections 367, 368, 375, and 376 shall not, prior to June 30, 2000, apply to any load served under over the fence arrangements entered into after December 20, 1995, between unaffiliated entities.
- (d) For the purposes of this subdivision, all onsite or over the fence arrangements shall be consistent with Section 218 as it existed on December 20, 1995.
- (e) To facilitate the development of new microcogeneration applications, electrical corporations may apply to the commission

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for a financing order to finance the transition costs to be recovered from customers employing the applications.

- (f) To encourage the continued development, installation, and interconnection of clean and efficient self-generation and cogeneration resources, to improve system reliability for consumers by retaining existing generation and encouraging new generation to connect to the electric grid, and to increase self-sufficiency of consumers of electricity through the deployment of self-generation and cogeneration, both of the following shall occur:
- (1) The commission and the Electricity Oversight Board shall determine if any policy or action undertaken by the Independent System Operator, directly or indirectly, unreasonably discourages the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid.
- (2) If the commission and the Electricity Oversight Board find that any policy or action of the Independent System Operator unreasonably discourages the connection of existing self-generation or cogeneration or new self-generation or cogeneration to the grid, the commission and the Electricity Oversight Board shall undertake all necessary efforts to revise, mitigate, or eliminate that policy or action of the Independent System Operator.
- SEC. 11. Section 373 of the Public Utilities Code is amended to read:
- 373. (a) Electrical corporations may apply to the commission for an order determining that the costs identified in Sections 367, 368, 375, and 376 not be collected from a particular class of customer or category of electricity consumption.
- (b) Subject to the fire wall specified in subdivision (e) of Section 367, the provisions of this section and Sections 372 and 374 shall apply in the event the commission authorizes a nonbypassable charge prior to the implementation of an Independent System Operator and Power Exchange referred to in subdivision (a) of Section 365.
- SEC. 12. Section 374 of the Public Utilities Code is amended to read:
- 374. (a) In recognition of statutory authority and past investments existing as of December 20, 1995, and subject to the firewall specified in subdivision (e) of Section 367, the obligation to pay the uneconomic costs identified in Sections 367, 368, 375, and 376 shall not apply to the following:

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(1) One hundred ten megawatts of load served by irrigation districts, as hereafter allocated by this paragraph:

- (A) The 110 megawatts of load shall be allocated among the service territories of the three largest electrical corporations in the ratio of the number of irrigation districts in the service territory of each utility to the total number of irrigation districts in the service territories of all three utilities.
- (B) The total amount of load allocated to each utility service area shall be phased in over five years beginning January 1, 1997, so that one-fifth of the allocation is allocated in each of the five years. Any allocation that remains unused at the end of any year shall be carried over to the succeeding year and added to the allocation for that year.
- (C) The load allocated to each utility service territory pursuant to subparagraph (A) shall be further allocated among the respective irrigation districts within that service territory by the California Energy Resources Conservation and Development Commission. An individual irrigation district requesting an allocation shall submit to the commission by January 31, 1997, detailed plans that show the load that it serves or will serve and for which it intends to utilize the allocation within the timeframe requested. These plans shall include specific information on the irrigation districts' organization for electric distribution, contracts, financing and engineering plans for capital facilities, as well as detailed information about the loads to be served, and shall not be less than eight megawatts or more than 40 megawatts, provided, however, that any portion of the 110 megawatts that remains unallocated may be reallocated to projects without regard to the 40 megawatts limitation. In making an allocation among irrigation districts, the Energy Resources Conservation and Development Commission shall assess the viability of each submission and whether it can be accomplished in the timeframe proposed. The Energy Resources Conservation and Development Commission shall have the discretion to allocate the load covered by this section in a manner that best ensures its usage within the allocation period.
- (D) At least 50 percent of each year's allocation to a district shall be applied to that portion of load that is used to power pumps for agricultural purposes.
- (E) Any load pursuant to this subdivision shall be served by distribution facilities owned by, or leased to, the district in question.

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(F) Any load allocated pursuant to paragraph (1) shall be located within the boundaries of the affected irrigation district, or within the boundaries specified in an applicable service territory boundary agreement between an electrical corporation and the affected irrigation district; additionally, the provisions of subparagraph (C) of paragraph (1) shall be applicable to any load within the Counties of Stanislaus or San Joaquin, or both, served by any irrigation district that is currently serving or will be serving retail customers.

- (2) Seventy-five megawatts of load served by the Merced Irrigation District hereafter prescribed in this paragraph:
- (A) The total allocation provided by this paragraph shall be phased in over five years beginning January 1, 1997, so that one-fifth of the allocation is received in each of the five years. Any allocation that remains unused at the end of any year shall be carried over to the succeeding year and added to the allocation for that year.
- (B) Any load to which the provision of this paragraph is applicable shall be served by distribution facilities owned by, or leased to, Merced Irrigation District.
- (C) A load to which the provisions of this paragraph are applicable shall be located within the boundaries of Merced Irrigation District as those boundaries existed on December 20, 1995, together with the territory of Castle Air Force Base that was located outside of the district on that date.
- (D) The total allocation provided by this paragraph shall be phased in over five years beginning January 1, 1997, with the exception of load already being served by the district as of June 1, 1996, which shall be deducted from the total allocation and shall not be subject to the costs provided in Sections 367, 368, 375, and 376.
- (3) To loads served by irrigation districts, water districts, water storage districts, municipal utility districts, and other water agencies that, on December 20, 1995, were members of the Southern San Joaquin Valley Power Authority, or the Eastside Power Authority, provided, however, that this paragraph shall be applicable only to that portion of each district or agency's load that is used to power pumps that are owned by that district or agency as of December 20, 1995, or replacements thereof, and is being used to pump water for district purposes. The rates applicable to these districts and agencies shall be adjusted as of January 1, 1997.

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(4) The provisions of this subdivision shall no longer be operative after March 31, 2002.

- (5) The provisions of paragraph (1) shall not be applicable to any irrigation district, water district, or water agency described in paragraph (2) or (3).
- (6) Transmission services provided to any irrigation district described in paragraph (1) or (2) shall be provided pursuant to otherwise applicable tariffs.
- (7) Nothing in this chapter shall be deemed to grant the commission any jurisdiction over irrigation districts not already granted to the commission by existing law.
- (b) To give the full effect to the legislative intent in enacting Section 701.8, the costs provided in Sections 367, 368, 375, and 376 shall not apply to the load served by preference power purchased from a federal power marketing agency, or its successor, pursuant to Section 701.8 as it existed on January 1, 1996, provided that the power is used solely for the customer's own systems load and not for sale. The costs of this provision shall be borne by all ratepayers in the affected service territory, notwithstanding the firewall established in subdivision (e) of Section 367.
- (c) To give effect to an existing relationship, the obligation to pay the uneconomic costs specified in Sections 367, 368, 375, and 376 shall not apply to that portion of the load of the University of California campus situated in Yolo County that was being served as of May 31, 1996, by preference power purchased from a federal marketing agency, or its successor, provided that the power is used solely for the facility load of that campus and not, directly or indirectly, for sale.
- SEC. 13. Section 374.5 of the Public Utilities Code is repealed. 374.5. Any electrical corporation serving agricultural customers that have multiple electric meters shall conduct research based on a statistically valid sample of those customers and meters to determine the typical simultaneous peak load of those customers. The results of the research shall be reported to the customers and the commission not later than July 1, 2001. The commission shall consider the research results in setting future electric distribution rates for those customers.
- SEC. 14. Section 375 of the Public Utilities Code is repealed. 375. (a) In order to mitigate potential negative impacts on utility personnel directly affected by electric industry restructuring,

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as described in Decision 95-12-063, as modified by Decision 96-01-009, the commission shall allow the recovery of reasonable employee related transition costs incurred and projected for severance, retraining, early retirement, outplacement and related expenses for the employees.

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- (b) The costs, including employee related transition costs for employees performing services in connection with Section 363, shall be added to the amount of uneconomic costs allowed to be recovered pursuant to this section and Sections 367, 368, and 376, provided recovery of these employee related transition costs shall extend beyond December 31, 2001, provided recovery of the costs shall not extend beyond December 31, 2006. However, there shall be no recovery for employee related transition costs associated with officers, senior supervisory employees, and professional employees performing predominantly regulatory functions.
- SEC. 15. Section 379 of the Public Utilities Code is amended to read:
- 379. Nuclear decommissioning costs shall not be part of the costs described in Sections 367, 368, 375, and 376, but shall be recovered as a nonbypassable charge until the time as the costs are fully recovered. Recovery of decommissioning costs may be accelerated to the extent possible.
- SEC. 16. Section 397 of the Public Utilities Code is amended to read:
- 397. (a) Notwithstanding subdivision (a) of Section 368, to To ensure the continued safe and reliable provision of electric service during the transition to competition, and to limit the effect of fuel price volatility in electric rates paid by California consumers, it is in the public interest to allow an electrical corporation which is also a gas corporation and served fewer than four million customers as of December 20, 1995, to file with the commission a rate cap mechanism which shall include a Fuel Price Index Mechanism requiring limited adjustments in an electrical corporation's authorized System Average Rate in effect on June 10, 1996, to reflect price changes in the fuel market. The commission shall authorize an electrical corporation to implement a rate cap mechanism which includes a Fuel Price Index Mechanism provided the following criteria are met:
- (1) The Fuel Price Index Mechanism shall be based on the Southern California Border Index price for natural gas as published

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periodically in Natural Gas Intelligence Magazine. The "Starting
Point" of the Fuel Price Index Mechanism shall be defined as the
California Border Index price as published in Natural Gas
Intelligence for January 1, 1996.

- (2) The Fuel Price Index Mechanism shall include a "deadband" defined as a price range for natural gas that is any price up to 10 percent higher, or lower, than the Starting Point.
- (3) The electrical corporation shall not file for a change in its authorized System Average Rate unless the California Border Index price, on a 12-month, rolling average basis, is outside the deadband. If the published California Border Index is outside of the deadband, the electrical corporation shall increase, or decrease, its authorized System Average Rate by an amount equal to the product of 25 percent multiplied by the percentage by which the 12-month rolling average natural gas price is higher, or lower, than the deadband.
- (4) In no case shall an electrical corporation's authorized System Average Rate under the Fuel Price Index Mechanism exceed the average of the authorized system average rates for the two largest electrical corporations as of June 10, 1996.
- 21 (5) This section shall become inoperative on December 31, 22 2001.
 - SEC. 17. Section 846.2 of the Public Utilities Code is amended to read:
 - 846.2. (a) Notwithstanding subdivision (c) of Section 841, for any electrical corporation that ended its rate freeze period described in subdivision (a) of Section 368 prior to July 15, 1999, the commission may order a fair and reasonable credit to ratepayers of any excess rate reduction bond proceeds.
 - (b) "Excess rate reduction bond proceeds," as used in this section, means proceeds from the sale of rate reduction bonds authorized by commission financing orders issued pursuant to this article that are subsequently determined by the commission to be in excess of the amounts necessary to provide the 10-percent rate reduction during the period when the rates were frozen pursuant to subdivision (a) of Section 368. frozen.
- 37 SEC. 18. Section 9600 of the Public Utilities Code is amended to read:
- 39 9600. (a) It is the intent of the Legislature that California's 40 local publicly owned electric utilities and electric corporations

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should commit control of their transmission facilities to the Independent System Operator as described in Chapter 2.3 (commencing with Section 330) of Part 1 of Division 1. These utilities should jointly advocate to the Federal Energy Regulatory Commission a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants and is based on the following principles:

- (1) Utility specific access charge rates as proposed in Docket No. EC96-19-000 as finally approved by the Federal Energy Regulatory Commission reflecting the costs of that utility's transmission facilities shall go into effect on the first day of the Independent System Operator operation. The utility specific rates shall honor all of the terms and conditions of existing transmission service contracts and shall recognize any wheeling revenues of existing transmission service arrangements to the transmission owner.
- (2) (A) No later than two years after the initial operation of the Independent System Operator, the Independent System Operator shall recommend for adoption by the Federal Energy Regulatory Commission a rate methodology determined by a decision of the Independent System Operator governing board, provided that the decision shall be based on principles approved by the governing board including, but not limited to, an equitable balance of costs and benefits, and shall define the transmission facility costs, if any, which shall be rolled in to the transmission service rate and spread equally among all Independent System Operator transmission users, and those transmission facility costs, if any, which should be specifically assigned to a specific utility's service area.
- (B) If there is no governing board decision, the rate methodology shall be determined following a decision by the alternative dispute resolution method set forth in the Independent System Operator bylaws.
- (C) If no alternative dispute resolution decision is rendered, then a default rate methodology shall be a uniform regional transmission access charge and a utility specific local transmission access charge, provided that the default rate methodology shall be recommended for implementation upon termination of the cost recovery plan-set forth in Section 368 or no later than two years

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after the initial operation of the Independent System Operator, whichever is later. For purposes of this paragraph, regional transmission facilities are defined to be transmission facilities operating at or above 230 kilovolts plus an appropriate percentage of transmission facilities operating below 230 kilovolts; all other transmission facilities shall be considered local. The appropriate percentage of transmission facilities described above shall be consistent with the guidelines in Federal Energy Regulatory Commission Order No. 888 and any exception approved by that commission.

- (3) If the rate methodology implemented as a result of a decision by the Independent System Operator governing board or resulting from the independent system operator alternative dispute resolution process results in rates different than those in effect prior to the decision for any transmission facility owner, the amount of any differences between the new rates and the prior rates shall be recorded in a tracking account to be recovered from customers and paid to the appropriate transmission owners by the transmission facility owner after termination of the cost recovery plan set forth in Section 368. The recovery and payments shall be based on an amortization period not to exceed three years in the case of the electrical corporations or five years in the case of the local publicly owned electric utilities.
- (4) The costs of transmission facilities placed in service after the date of initial implementation of the Independent System Operator shall be recovered using the rate methodology in effect at the time the facilities go into operation.
- (5) The electrical corporations and the local publicly owned electric utilities shall jointly develop language for implementation proposals to the Federal Energy Regulatory Commission based on these principles.
- (6) Nothing in this section shall compel any party to violate restrictions applicable to facilities financed with tax-exempt bonds or contractual restrictions and covenants regarding use of transmission facilities existing as of December 20, 1995.
- (b) Following a final Federal Energy Regulatory Commission decision approving the Independent System Operator, no California electrical corporation or local publicly owned electric utility shall be authorized to collect any competition transition charge authorized pursuant to this division and Chapter 2.3 (commencing

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with Section 330) of Part 1 of Division 1 unless it commits control of its transmission facilities to the Independent System Operator. SEC. 19. Section 9607 of the Public Utilities Code is amended

to read:

- 9607. (a) The intent of this section is to avoid cost-shifting to customers of an electrical corporation resulting from the transfer of distribution services from an electrical corporation to an irrigation district.
- (b) Except as otherwise provided in this section and Section 9608, and notwithstanding any other provision of law, an irrigation district that offered electric service to retail customers as of January 1, 1999, may not construct, lease, acquire, install, or operate facilities for the distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution services, unless the district has first applied for and received the approval of the commission and implements its service consistent with the commission's order. The commission shall find that service to be in the public interest and shall approve the request of a district to provide distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution service if, after notice and hearing, the commission determines all of the following:
- (1) The district will provide universal service to all retail customers who request service within the area to be served, at published tariff rates and on a just, reasonable, and nondiscriminatory basis, comparable to that provided by the current retail service provider.
- (2) If the area the district is proposing to serve is either of the following:
- (A) Is within the district's boundaries but less than the entire district, the area to be served includes a percentage of residential customers and small customers, based on load, comparable to the percentage of residential and small customers in the district, based on load.
- (B) Includes territory outside the district's boundaries, in which case the territory outside the district's boundaries must include a percentage of residential customers and small customers, based on load, comparable to the percentage of residential and small

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1 customers in the county or counties where service is to be provided,2 based on load.

- (3) Service by the district will be consistent with the intent of the state to avoid economic waste caused by duplication of facilities as set forth in Section 8101.
- (4) Service by the district will include reasonable mitigation of any adverse effects on the reliability of an existing service by the electrical corporation.
- (5) The district has established, funded, and is carrying out public purpose and low-income programs comparable to those provided by the current electric retail service provider.
- (6) That district's tariffed electric rates, exclusive of commodity costs, will be at least 15 percent below the tariffed electric rates, exclusive of commodity costs and nonbypassable charges under Sections 367, 368, 375, 376, and 379, of the electrical corporation for comparable services.
 - (7) Service by the district is in the public interest.
- (c) An irrigation district that obtains the approval of the commission under this section to serve an area shall prepare an annual report available to the public on the total load and number of accounts of residential, low-income, agricultural, commercial, and industrial customers served by the irrigation district in the approved service area.
- (d) The commission shall have jurisdiction to resolve and adjudicate complaint cases brought against an irrigation district that offered electric service to retail customers as of January 1, 1999, by an interested party where the complaint concerns retail electric service outside the boundaries of the district and within the service territory of an electrical corporation. Nothing in this section grants the commission jurisdiction to adjudicate complaint cases involving retail electric service by an irrigation district inside its boundaries or inside an irrigation district's exclusive service territory.
- (e) Any project involving electric transmission or distribution facilities to be constructed or installed by an irrigation district to serve retail customers located in the service territory of an electrical corporation providing electric distribution services shall comply with the California Environmental Quality Act, (Division 13 (commencing with Section 21000)) of the Public Resources Code. The county in which the construction or installation is to occur

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shall act as the lead agency. If a project involves the construction or installation of electric transmission or distribution facilities in more than one county, the county where the majority of the construction is anticipated to occur shall act as the lead agency.

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- (f) An irrigation district may not offer service to customers outside of its district boundaries before offering service to all customers within its district boundaries.
- (g) This section does not apply to electric distribution service provided by Modesto Irrigation District to those customers or within those areas described in subdivisions (a), (b), and (c) of Section 9610.
- (h) The provisions of this section shall not apply to (1) a cumulative 90 megawatts of load served by the Merced Irrigation District that is located within the boundaries of Merced Irrigation District, as those boundaries existed on December 20, 1995, together with the territory of Castle Air Force Base which was located outside the District district on that date, or (2) electric load served by the District district which was not previously served by an electric corporation that is located within the boundaries of Merced Irrigation District, as those boundaries existed on December 20, 1995, together with the territory of Castle Air Force Base which was located outside the District district on that date.
- (i) For purposes of this section, a megawatt of load shall be calculated in accordance with the methodology established by the California Energy Resource Conservation and Development Commission in its Docket No. 96-IRR-1890, but the 90 megawatts shall not include electrical usage by customers that move to the areas described in paragraph (1) after December 31, 2000.
- (j) Subdivision (a) of this section shall not apply to the construction, modification, lease, acquisition, installation, or operation of facilities for the distribution or transmission of electricity to customers electrically connected to a district as of December 31, 2000, or to other customers who subsequently locate at the same premises.
- (k) In recognition of contractual arrangements and settlements existing as of June 1, 2000, this section does not apply to the acquisition or operation of the electric distribution facilities that are the subject of the Settlement Agreement dated May 1, 2000, between Pacific Gas and Electric Company and the San Joaquin Irrigation District.

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- (l) For purposes of this section, retail customers do not include an irrigation district's own electric load being served of retail by an electrical corporation.